IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 12312 of 2006

Date of decision: 30-11-2007

Pardeep Kumar Sethi and another ...Petitioners

Versus

State of Haryana and others ...Respondents.

CORAM:- HON'BLE MR. JUSTICE K.S.GAREWAL
HON'BLE MR. JUSTICE R.S. MADAN

Present: Mr. Mukul Rohtagi, Senior Advocate with
Mr. Shailender Jain, Advocate, for the petitioners.

Mr. Hawa Singh Hooda, Advocate General, Haryana with
Mr. Anil Rathee, Additional Advocate General, Haryana,
for respondents No. 1 and 2.

Mr. Manoj K. Sood, Advocate, for respondent No.3.

Mr. Ashok Aggarwal, Senior Advocate with
Mr. Mukul Aggarwal, Advocate for respondent No.4

Mr. Arun Walia, Advocate, for respondent No. 6

K.S.GAREWAL, J.

The petitioners are two brothers, Pardeep Kumar Sethi and Som Parkash Sethi, who have vast mining interests in Faridabad but the present case relates to the two leases granted to them by the Director, Mines and Geology (respondent 2). Pardeep Kumar Sethi holds lease over 162 hectares in Pali, lease was originally granted on May 8, 1985 for 10 years but now stands extended upto May 7, 2015. Som Parkash Sethi was granted lease

over 82 hectares on January 16, 1984, and his lease stood extended upto January 15, 2004. 14 acres under Pardeep Kumar Sethi's lease and 17 acres under Som Parkash Sethi's lease constitute the 31 acres for which lease has been granted by Municipal Corporation, Faridabad (respondent 3) to Haryana Environment Protection Society (respondent 4)on April 19, 2005.

The petitioners have filed this petition to save their above mentioned mining leases because 31 acres (12 hectares) out of the above leaseholds has been leased for 10 years for development of a common treatment, storage and disposal facility (TSDF) for hazardous waste, on an annual lease rent of Rs. 27.12 lacs. This has been done under the Environment (Protection) Act, 1986 and the Hazardous Wastes (Management and Handling) Rules, 1989.

The Department of Environment had many years ago on May 27, 1997 issued a notification under the Hazardous Wastes (Management and Handling) Rules in respect of the 31 acres aforesaid, notified as an inventory site, for storage and disposal facility of hazardous waste and not for treatment in situ, as appears to be the respondents case.

This case relates to the conflict of interest between the holders of the two mining leases and the holders of the TSDF lease.

The mining leases are under the Haryana Minerals (Vesting of Rights) Act 1973 and the Mines and Minerals (Development of Regulation) Act, 1957. The Supreme Court had conducted an in-depth study of mining in Haryana on the Delhi- Haryana border in M.C. Mehta Versus Union of India and others (2004) 12 Supreme Court Cases 118 and on May 6, 2002 was pleased to ban on all mining activity, in the area upto 5 kms from the State border. However, a Monitoring Committee was constituted to inspect

the mines from the environmental angle, on individual mine-to-mine basis, and submit a report within three months. Lifting of the said ban was to be considered on the basis of the report. This matter is still stated to be pending.

The TSDF lease was granted under the Hazardous Wastes (Management and Handling) Rules 1989 framed under the Environment (Protection) Act 1986. The Supreme Court had in Research Foundation for Science Technology and National Resource Policy versus Union of India and another (2005) 10 SCC 510 considered all aspects of disposal of hazardous waste, the TSDF lease appears to be in response to Supreme Court's directions.

Let us examine the circumstances under which 31 acres came to be declared as a site suitable for the TSDF lease. The Hazardous Wastes (Management and Handling) Rules, 1989 were promulgated on July 28, 1989 in exercise of powers conferred by Sections 6, 8 and 25 of the Environment (Protection) Act, 1986. The Rules went through the process of frequent amendments. The amended rule for disposal sites is Rule 8, design and setting up of disposal facility is covered by Rule 8A and for operation and closure of landfill site, one has to refer to Rule 8B. The unamended Rule 8 as promulgated in 1989 was not so detailed. The unamended rule required the State Government to undertake a continuing programme to identify the sites, compile and periodically publish an inventory of disposal sites within the State for the disposal of hazardous wastes. The State Government was further required to undertake an environment impact study before notifying a site as waste disposal site in the State where hazardous wastes could be stored or disposed of.

The amended rules greatly enlarged the scope of identifying disposal sites for establishment of treatment, storage and disposal facilities (the original rules only spoke of disposal but not of treatment and storage). Of course, there is a provision for undertaking an environment impact assessment of the selected sites under the amended rules but on being satisfied a public notice is required to be issued for a public hearing on environment impact. The details of the hearing are forwarded to the Government within 30 days, the Government makes a complete assessment within 30 days on receipt of the documents and conveys its decision on approval or otherwise within 30 days. It is after this approval that the State Government acquires the site and notifies it. The original rule did not require a public hearing on the environment impact study or require taking of possession only after the details of the hearing were conveyed to the Government. But environment impact study was necessary before notification could be issued. It would be necessary to notice that an environment assessment report was prepared by the National Productivity Council (Environment Division) in September, 1998 which has been placed on record as Annexure A/1 to CM 8595 of 2007. This relates to the selection of hazardous waste disposal sites in Faridabad.

The notification issued by the Environment Department on May 27, 1997 is the relevant notification which covers the 31 acres in Pali stated to be owned by the Municipal Corporation. In the notification it has been recited that an environment impact study was undertaken for identifying a site as waste disposal site for Faridabad area in accordance with the provisions of Sub Rule (2) of the Hazardous Wastes (Management and Handling) Rules, 1989. It is obvious that this notification of 1997 was

issued before the environment impact study of September, 1998. The rule required the study to precede the notification and not the other way around. Be that as it may, no public notice was issued for public hearing, the assessment of the Government on the basis of the environment impact study and the details of public hearing was not done, approval of the Government was not taken for the setting up of TSDF, approval was only for a waste disposal site. Quite obviously the notification of 1997 was on the basis of the rules as originally drafted but not on the basis of the amended rules as they stand.

The specific stand of the Department of Mines in respect of the case put forward by the petitioners needs to be examined. The Department has admitted that both Pardeep Kumar Sethi and Som Parkash Sethi (petitioners 1 and 2) held these leases in Pali for extraction of silica sand, ordinary sand and stone. 31 acres over which the hazardous waste dumping site is being created was a part of the mining leases given to the petitioners. However, the renewal of the lease for 17 acres held by Som Parkash Sethi was rejected on April 28, 2007. Only 14 acres out of 162 hectares held by Pawan Kumar Sethi was required for the hazardous waste dumping site. After the renewal application for 17 acres was rejected the decision to renew the remaining area had been kept in abeyance till the final decision of the Supreme Court in M.C. Mehta's case (supra). It was admitted that although mining within 5 kilometers of Delhi-Haryana border was closed since May 6, 2002, but the matter regarding resumption of mining was still pending before the Supreme Court.

We think the factual matrix as well as legal position has been laid bare in the above paragraphs, therefore, we may now proceed to

determine the rights of the parties in respect of their leases.

The questions which arise for consideration in this case are with regards to the validity of the mining lease(s), whether the leases continue to subsist in the face of the order of the Supreme Court dated May 6, 2006 in M.C. Mehta's case. The other question would be as regards the validity of the TSDF lease and whether this lease could be challenged in view of the Supreme Court's order dated October 14, 2003 in Research Foundation case. A subsidiary question in order to determine the validity of the TSDF lease would be the procedure adopted by the Government to notify 31 acres in Pali for disposal of hazardous waste.

If extracting sand and stone from the area is covered by the ban imposed by the Supreme Court for environmental reasons, can the same underground shafts be utilized for disposing hazardous waste by pumping it into the earth. Under Rule 3(14) of the Rules "hazardous waste" is any waste which by reason of its physical, chemical, reactive, toxic, flammable, explosive or corrosive characteristics causes danger as is likely to cause danger to health or environment etc. If extraction of sand is degrading the environment will pumping hazardous material likewise not degrade the environment? One would like to think that extracting sand is a somewhat less hazardous activity, when compared to pumping hazardous material, treated or untreated. No convincing answer to the viability or the environmental sustainability of the TSDF lease is forthcoming. On the other hand it is clear from the order of the Supreme Court passed in M.C. Mehta's case, that the question whether the mining ban is to be made absolute, vacated or modified was still open. Indeed in the written statement filed by the Mining Engineer, it has been categorically stated that the report of the

Monitoring Committee is under consideration of the Supreme Court and the matter regarding mining within 5 kms is still pending.

The procedure adopted by the Government to notify 31 acres on May 27, 1997 as an inventory site, is also questionable because no environment impact study was relied upon by the State to form the basis for the notification to issue. There is a detailed study prepared in September 1998 but this was long after the notification. The notification says "Whereas an environment impact Study was undertaken for identifying a site as Waste Disposal Site for Faridabad Area". No such study has been placed on the record. Furthermore, no public hearing was carried out before the notification was issued. Although there was no requirement for public hearing provided in the earlier Rules but natural justice demanded that hearing should be given to persons enjoying mining rights over the land which was proposed to be notified. The petitioners were never heard and had no opportunity to object to the proposed notification.

There are two important judgments of the Supreme Court which have a direct bearing on the present case but both the judgments are independent of each other, reliance on one to the exclusion of the other, may lead to a one sided view of the case. However, we feel that M.C. Mehta's case is the case which has a much greater bearing on the issues before us which are required to be balanced. If the question of disposal of hazardous material had been before the Supreme Court when mining activity in Faridabad was being considered in M.C. Mehta's case, it would have been certainly dealt with in accordance with principles laid down in that case. It is still not late to refer to M.C. Mehta's case in order to see what impact it would have on treatment and disposal of hazardous waste. The Supreme

Court in para 62 had made the following observations while referring to recommendations made in the report prepared by Central Mine Planning & Design Institute(CMPDI):-

> " Rehabilitation programmes for the abandoned mine areas are either to convert these to water reservoirs and eco-parks or reclamation by filling by rural waste, urban waste or fly ash. The master plan should be detailed to show the areas where overburden could be dumped, areas where waste material could be stocked, areas where plantation could be carried out etc. etc. The planning should, inter alia, include environmental impact and concerns of activities of one sector on the other sectors in the district e.g. Afforestation should be planned not only with a view to increase vegetation on the hills but also to be supplement for fuel, fodder etc. in the district. All efforts should be made to preserve the groundwater resources. Water-shed management and rainwater harvesting to be implemented in the Aravalli hill regions on a war footing. In the areas where mining deeper than the groundwater table of the area is to be carried out, adequate provision of pollution control and conservation of water resources should be made. There should be frequent inspections of the mining operations to ensure that these are in line with the requirement for sustainable development. The inspections may be carried out at an interval of three months. There should be continual source of revenue from the mining operations to the fund, recommended to be created, for the eco-restoration of the Aravalli hills. The

minimum period of lease should be for 15-20 years. This will induce the mine operators to take environmental protection measures more seriously.....

The mining lessee should implement the environmental management plan and mining plan approved by the authority concerned. In future, efforts in respect o search of sustainable development should broadly take into consideration resource potential in the region, the demand of the products and the supply options. Though the demand for the niche products existing in the Aravalli range which is one of the oldest mountain ranges in India will continue to grow, the supply options need to be given a closer look due to eco-sensitivity of the region. The environmental cost needs to be internalised in the cost o the product and there is need to limit the supply options.....

The small mines (less than 5 hectares) and the mining of minor minerals which are no doubt small individually but have damaging characteristics when in clusters e.g. Mines of granite, marble, slate, quartzite etc. (falling under minor minerals) are no less damaging than the others, especially when the processing is taken into consideration. The mining activities result in disturbance of land surface, altering drainage pattern and land use, besides pollution problems, which may lead to the environmental problems of air, water and noise pollution and solid waste pollution."

While concluding the Supreme Court observed as under:-

"Now, the question is should mining activities in the Aravalli range in Gurgaon district be permitted to restart and, to that extent, the order dated 6.5.2002 be modified, meanwhile directing implementation of recommendations in the report of CMPDI and earlier-referred reports. The other option is to first constitute a Monitoring Committee directing it to individually examine and inspect mines from the environmental angle in the light of the said recommendations and file a report in this Court in respect of individual mines with its recommendations for restart or otherwise as also recommendation, if any, for the payment by the mine operators and/or by the State Government towards environmental fund having regard to the precautionary principle and polluter-pays principle and on consideration of that report, to decide the aspect of modification of the order dated 6.5.2002 partially or entirely. We are of the view that the second option is more appropriate. We are conscious of observations in CMPDI that measures for protecting the environment can be undertaken without stopping mine operations and also the suggestions of MOEF to permit mining subject to the mine leaseholders undertaking to comply with such conditions which remain to be complied, but having regard to the enormous degradation of the environment, in our view, the safer and the proper course is to first constitute a Monitoring Committee, get a report from it and only thereafter consider, on individual mine-to-mine basis, lifting of ban imposed in terms of order dated 6.5.2002. Before concluding

this aspect, we may note that assuming there was any ambiguity about the applicability of order dated 6.5.2002 to mining in Aravalli range, it is clarified that the said order would be applicable to all the mines in Aravalli hill range in Gurgaon district."

We are convinced that the notification cannot pass the test of environmental sustainability as its implementation would have a "hazardous" impact on the environment. The lease awarded to the Haryana Environment Management Society was likewise unsustainable in law, apart from being environmentally unsustainable as well.

Learned Advocate General argued that mining leases of the petitioners had lapsed in view of the provisions of the Mineral Concession Rules, 1960. Rule 28 dealt with lapse of lease where mining operation had been discontinued for one year. In the present case mining operations have indeed been suspended in view of the ban imposed on mining by the Supreme Court in M.C. Mehta's case but the above rule postulates that an order declaring any lease to have lapsed has to be passed by the State Government. So far the Government had not passed any order and this rule has not been invoked in respect of the mining leases in question. The resumption of mining is still pending before the Supreme Court. Therefore, the argument that the leases had lapsed is without any basis. It was further argued that the lessees had not paid compensation to the Faridabad Municipal Corporation. A reference to communication dated March 29, 2004 addressed by the Commissioner, Municipal Corporation, Faridabad to the Commissioner, Haryana Urban Development Department would make it clear that the dispute is pending before the competent authority and

Commissioner Municipal Corporation had requested that the Department of Mines and Geology should give details of the lease to them to help to recover the due compensation. The question of compensation is naturally one which is still to be decided and failure to pay compensation may or may not lead to cancellation of the lease. Furthermore, it was argued that the lease in favour of Som Parkash Sethi in respect of 17 acres was not renewed on April 28, 2007. Since this renewal was denied simply because the site was required for disposal of hazardous waste, if the challenge to the notification during the disposal site and subsequent TSDF lease succeeds, the order of non-renewal would itself collapse. Lastly, it was argued that the site under the mining lease was required for the TSDF lease and no court could interfere with the grant of lease since it was in accordance with the requirement of law. The order passed in Research Foundation case on July 18, 2005 specifically directed that no court shall take cognizance or entertain any challenge connected with the implementation of the main judgment dated October 14, 2003. The challenge of the petitioners is not with regards to the implementation of the Supreme Court's order but is on an entirely different footing and is based on grounds which do not in any way impinge on the Supreme Court's order. The petitioners are seeking to enforce their rights under leases granted to them which are still subsisting though mining has been suspended. The defence of its actions by the State has no force. .

On behalf of the Haryana Environment Protection Society similar arguments were raised that after the ban imposed by the Supreme Court, the petitioners had no grounds to assert their rights under the leases. The notification of May 27, 1997 had been issued under the old Rule 8,

therefore, reliance on the new Rule was misplaced and the challenge was highly belated. We are not convinced with these arguments as the petitioners are seeking to enforce their rights under the leases which have not been validly cancelled. The petitioners have successfully shown that the procedure under the amended or the old Rules regarding management of hazardous waste was not followed. The petitioners have also been successful in showing that the notification was ultra vires both the old and the amended rules. The legal requirement of preparing an environmental impact study before identification of the site as per the old Rule 8 had not been done.

The issues in this case are the vested rights of the petitioners who are entitled to enjoy the mining leases and also their right to be heard if the lease was to be cancelled, the land taken from them and awarded to another party. There is nothing on the record to show that the petitioners were ever heard before their leases were cancelled and 31 acres awarded to the Haryana Environment Protection Society for setting up TSDF facility. The challenge raised by the petitioners is not prohibited by the Supreme Court. This challenge is also not against orders passed in M.C. Mehta's case which banned mining.

Lastly, we feel that pumping hazardous waste treated or untreated in a site which has already been considered to be environmentally endangered cannot be environmentally friendly. Mining activity was stopped because environment was being degraded, how can disposed of toxic, flammable or corrosive waste in such an area ever be considered good. The notification as well as the environmental impact study dated September 1998 was long before the decision in M.C. Mehta's case.

We are of the considered view that the petition deserves to be allowed and notification dated May 27, 1997 alongwith the TSDF lease over 31 acres deserve to be quashed, being violative to the Hazardous Wastes (Management and Handling) Rules 1989 and also contrary to the rules of natural justice.

Consequently this petiton is allowed. Notification dated May 27, 1997 (Annexure P-3A) and lease deed dated April 19, 2005 (Annexure P-3) are hereby quashed.

The petitioners shall have their costs.

(K.S.GAREWAL)
JUDGE

(R.S.MADAN)
JUDGE

November 30, 2007
RSK/prem

NOTE: Whether to be referred to the Reporter or not:Yes/No